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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,365	03/09/2004	Roger Dean Neitzell	066042-9276-04	2254
60840 7590 05/29/2008 MICHAEL, BEST & FRIEDRICH LLP 100 EAST WISCONSIN AVENUE SUITE 3300 MILWAUKEE, WI 53202				
EXAMINER				
PAYER, HWEI SIU CHOU				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/796,365

Applicant(s)

NEITZELL ET AL.

Examiner

Hwei-Siu C. Payer

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 8-10, 12-21, 23, 24 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8-10, 12-21, 23, 24 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Detailed Action

The amendment filed on 2/29/2008 has been entered.

Claims Objection

Claims 6 and 13-15 are objected to because of the following informalities:

(1) In claim 6, line 3, "a projection" should read --the projection-- (note line 10 of claim 1).

(2) In claim 13, line 2, "aligned" should read --perpendicular to each other-- (note lines 14-15 of claim 12).

(3) In claim 13, line 7, "perpendicular to" should read --aligned with--.

Appropriate correction is required.

Claims Rejection - 35 U.S.C. 112, first paragraph

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-4, 6, 8-10, 12-21, 23, 24 and 27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to

reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

(1) In claim 1, line 17-18, the newly added limitation "wherein the actuator moves in a direction substantially perpendicular to movement of the projection" has no support from the original specification.

(2) In claim 12, lines 21-25, the newly added limitation "wherein one of the body and the hand grip includes an outwardly extending protuberance having an engagement surface extending more than 180 degrees around the pivot axis, and wherein the one of the body and the hand grip provides a recess adjacent to the protuberance for receiving a portion of the other of the body and the hand grip during pivoting movement of the hand grip relative to the body" has no support from the original specification.

(3) In claim 23, lines 28-32, the newly added limitation "wherein one of the body and the hand grip includes an outwardly extending protuberance having an engagement surface extending more than 180 degrees around the pivot axis, and the one of the body and the hand grip provides a recess adjacent to the protuberance for receiving a portion of the other of the body and the hand grip when the hand grip is moved relative to the body to the third position" has no support from the original specification.

Claims Rejection - 35 U.S.C. 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. (U.S. Patent No. 6,021,573) in view of Nagel (U.S. Patent No. Des. 377,303) and Alsrue (U.S. Patent No. 6,102,134).

Kikuchi et al. show a reciprocating saw comprising a housing (14, see Fig.1) having a body (not labeled) and a hand grip (not labeled) integrally formed with the body; the body housing a motor (44) and a drive mechanism (16); a reciprocating spindle (21) for supporting a tool element (46); the drive mechanism (16) being operably connected to the spindle (21) for causing reciprocation of the spindle (21); a switch assembly (42) operable to electrically connect the motor (44) to a power source (38); a wiring arrangement (not labeled, see Fig.1) electrically connecting the switch assembly (42) to the motor (44), and a trigger (40) substantially as claimed except the body and the hand grip are of one single piece (14) and therefore not adjustable with respect to each other.

Nagel teaches it is desirable to provide a power tool that is adjustable into three different positions, a first position in which the tool body and the hand grip are generally aligned (see Fig.8), a second position in which the tool body and the hand grip are at an obtuse angle (see Fig.7), and a third position in which the tool housing and the hand grip are generally perpendicular to each other (see Fig.2).

Therefore, it would have been obvious to one skilled in the art to modify Kikuchi et al. by having the one piece housing formed of two separated pieces, namely a body and a hand grip, and adjustably connecting the two pieces together so that they are

angularly adjustable in a plurality of different positions to facilitate the use of the power tool in a confined working area as taught by Nagel.

The power tool of Kikuchi et al. as modified above shows all the claimed structure except it lacks a locking mechanism, an actuator, and a biasing means.

Alsrue teaches providing a power tool with a locking mechanism having recesses (46,48) and a projection (90) engageable in a selective one of the recesses (46,48) for locking the hand grip (14) of the power tool in a plurality of different positions; an actuator (70) for moving the locking mechanism between a locked condition and an unlocked condition; and means (80) for biasing the locking mechanism toward a locked condition. Further, the actuator (70) moves in a direction substantially perpendicular to movement of the projection (90), in the sense that the actuator (70) is slidable left and right within a channel (74) while the projection (90) is slidable up and down within a slot (88, see Figs.4-6).

Therefore, it would have been obvious to one skilled in the art to further modify Kikuchi et al. by providing the power tool with a locking mechanism, an actuator, and a biasing means for adjusting the hand grip with respect to the housing of the power tool as taught by Alsrue.

Regarding claim 4, Alsrue shows a trigger (28) positioned intermediate the first and second ends of the hand grip (14).

3. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. (U.S. Patent No. 6,021,573) in view of Nagel (U.S. Patent No. Des. 377,303) and

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Alsrue (U.S. Patent No. 6,102,134) as applied to claim 1 above, and further in view of Yang (U.S. Patent No. 4,976,173).

The power tool of Kikuchi et al. as modified above shows all the claimed structure except the power tool is powered by a battery (38) contained in the power tool rather than by an external power source via a cord.

However, it is well known in the art to use a power cord for supplying an external energy source to a power tool as evidenced by Yang (see column 3, lines 40-42).

Since both Kikuchi et al. and Yang teach methods of powering a power tool, it would have been obvious to one skilled in the art to substitute the power cord of Yang for the battery of Kikuchi et al. to achieve the predictable result of powering a power tool.

Remarks

Applicant's arguments with respect to claims 12-21, 23, 24 and 27 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues the newly added limitation "wherein the actuator moves in a direction substantially perpendicular to movement of the projection" as in claim 1 is not shown in Alsrue. Examiner disagrees. Specifically, Alsrue's actuator (70) is slidable left and right within a channel (74) while the projection (90) is slidable up and down within a slot (88, see Figs.4-6). Therefore, Alsrue's actuator (70) is broadly interpreted as being movable in a direction substantially perpendicular to the movement of the projection (90).

Action Made Final

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 571-272-4511. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone numbers for

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the organization where this application or proceeding is assigned are 571-273-8300 for official communications and 571-273-4511 for proposed amendments.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

H Payer
May 31, 2008

/Hwei-Siu C. Payer/
Primary Examiner, Art Unit 3724

